

Members

Sen. Travis Holdman
Sen. Michael Delph
Sen. James Arnold
Sen. Greg Taylor
Rep. John Bartlett
Rep. John Barnes
Rep. Robert Behning
Rep. Ralph Foley
Gretchen Gutman
Gary Miller
Hon. John G. Baker
Michael McMahon
Jerry Bonnet
Richard Bramer
Anita Samuel



CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: December 7, 2009
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Travis Holdman; Rep. John Bartlett; Rep. John Barnes;
Rep. Robert Behning; Rep. Ralph Foley; Gretchen Gutman;
Hon. John G. Baker; Michael McMahon; Jerry Bonnet; Richard
Bramer; Anita Samuel.

Members Absent: Sen. James Arnold; Sen. Michael Delph; Sen. Greg Taylor; Gary
Miller.

Staff Present: Mr. Jack Ross, Executive Director, Legislative Services Agency;
Mr. John Stieff, Director, Office of Code Revision, Legislative
Services Agency; Mr. Bob Rudolph, Senior Staff Attorney,
Office of Bill Drafting and Research; Mr. Craig Mortell, Deputy
Director, Office of Code Revision; Mr. John Kline, Attorney,
Office of Code Revision; Mr. Dick Sheets, Editorial Assistant,
Office of Code Revision.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

I. CALL TO ORDER

The meeting was called to order at 1:30 p.m. by Chairman John Bartlett.

II. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on October 28, 2009, and there were no questions. The Commission approved the minutes by consent.

III. DISCUSSION OF TECHNICAL CORRECTIONS BILL

Representative Bartlett recognized Craig Mortell, deputy director of the Office of Code Revision, to address the Commission about the 2010 technical corrections (TC) bill.

With Representative Bartlett's consent, Mr. Mortell first drew the Commission's attention to PD 3449. He recalled:

- that two members of the Indiana Business Law Survey Commission, Marci Reddick and Steve Thornton, had appeared at the Commission's October 28, 2009, meeting and asked the Commission to consider endorsing legislation to amend IC 23-1-39-4(a) so that, instead of providing that IC 23-1-39-4 " ... does not apply to any corporation that has a (certain) class of voting shares ..." it would provide that IC 23-1-39-4 " ... applies only to corporations that have a (certain) class of voting shares ..."; and
- that the Commission decided at the October meeting to adopt as an official product of the Commission a separate 2010 "trailer bill" that would amend IC 23-1-39-4(a) as the Indiana Business Law Survey Commission requested.

Mr. Mortell explained that PD 3449 is the draft of the 2010 "trailer bill" prepared to amend IC 23-1-39-4(a) pursuant to the Commission's action at the October meeting.

Commission member Jerry Bonnet said that the Indiana Business Law Survey Commission appreciates the action taken by the Code Revision Commission to remedy the problem in IC 23-1-39-4(a).

Mr. Mortell directed the Commission members' attention to a one-page handout before them entitled "Proposed Contents of the 2010 TC Bill" and explained that the proposal of the Office of Code Revision is that the contents of the 2010 TC bill would be assembled as follows:

[1] include the contents of PD 3103, the technical corrections draft discussed at the Commission's October meeting;

[2] include the contents of PD 3501, the draft prepared for discussion at the December 7 meeting;

[3] delete the repealer of IC 6-1.1-29-1 that is in PD 3103; and

[4] include the SECTION in PD 3670 amending IC 35-38-1-17(a).

Mr. Mortell then presented PD 3501, the "part B" technical corrections draft. He said that PD 3501 consists mainly of SECTIONS addressing references that remain in the Indiana Code even though the statutes to which the references relate have been repealed. Directing the Commission members' attention to the SECTION-by-SECTION outline of PD 3501, he pointed out that individuals who had been consulted and had commented on proposed amendments in PD 3501 were named in the outline. He particularly expressed appreciation for the comments of George Angelone and Ed Gohmann of the LSA Office of Bill Drafting and Research, Tom Conley of the Department

of Revenue, and Brian Bailey of the Department of Local Government Finance concerning the tax-related SECTIONS of PD 3501.

Representative Foley noted that there were SECTIONS in PD 3501 that related to matters other than references to repealed statutes, and said he had particularly found SECTION 20, which amends IC 8-1-6-2 to change the unusual verb "quietused" into its noun form, to be interesting.

Gretchen Gutman asked about two of the SECTIONS addressing references to statutes that have been repealed. First, concerning SECTION 30, which amended the second sentence of subsection (c)(2) of IC 20-48-1-2 to insert "**(repealed)**" immediately after a reference to IC 6-1.1-19-8 (which was repealed in 2006), she asked whether PD 3501 could deal with the reference to IC 6-1.1-19-8 by striking the entire sentence in which the reference appears. Following a brief discussion, the decision was made with the Commission's consent to strike the entire sentence. Second, concerning SECTION 12, which amended subsection (e) of IC 6-3.5-7-25 to insert "**(repealed)**" immediately after a reference to IC 6-1.1-20.9 (which was repealed in 2008), Ms. Gutman asked whether PD 3501 could deal with the reference to IC 6-1.1-20.9 by striking all of subsection (e) and changing the letter designation of the succeeding subsections accordingly. The decision was made with the Commission's consent to strike subsection (e) in its entirety, but only on the condition that the tax and finance attorneys of the Office of Bill Drafting and Research, when consulted, would not foresee any potential substantive effect in the striking of subsection (e) in its entirety.

The discussion of PD 3501 having concluded, Mr. Mortell directed the Commission's attention to the third proposed step in assembling the contents of the 2010 TC bill:

[3] Delete the repealer of IC 6-1.1-29-1 that is in PD 3103.

He explained the need for this step as follows:

Before the 2009 special session of the General Assembly, IC 6-1.1-29-1 contained a subsection (b) that read as follows: "This section expires December 31, 2008." A repealer for IC 6-1.1-29-1 was included in PD 3103 on the assumption that IC 6-1.1-29-1 had expired by its own terms, as expressed in subsection (b). However, the budget bill passed in the 2009 special session [P.L.182-2009(ss)] amended IC 6-1.1-29-1 so as to strike all of subsection (b), effective retroactively as of December 30, 2008. Therefore, IC 6-1.1-29-1 should not be treated as having expired, and the repealer of IC 6-1.1-29-1 should not be included in the 2010 TC bill.

This third step having been accepted by the Commission, Mr. Mortell moved on to the fourth and last proposed step:

[4] Include the SECTION in PD 3670 amending IC 35-38-1-17(a).

He explained the need for this step as follows:

The 2005 TC bill [P.L.2-2005] amended IC 35-38-1-17 to make a technical correction. Before the 2005 amendment, IC 35-38-1-17(a) read in pertinent part as follows:

Sec. 17. (a) Within three hundred sixty-five (365) days after:
(1) the defendant begins serving his sentence;

To eliminate the word "his", a word importing gender, the 2005 TC bill amended IC 35-38-1-17(a)(1) as follows:

Sec. 17. (a) Within three hundred sixty-five (365) days after:
 (1) . . . begins serving ~~his~~ **the sentence imposed on the person;**

Under IC 35-38-1-17, a person who has been convicted of a crime and sentenced to imprisonment can seek a court order reducing or suspending the person's sentence. If not more than 365 days have passed since the person was imprisoned, a court can reduce or suspend the person's sentence without the consent of the prosecuting attorney; if more than 365 days have passed, the consent of the prosecuting attorney is needed.

The Court of Appeals, in *Redmond v. State*, 900 N.E.2d 40 (2009), was faced with the issue of how the 365 day time limit of IC 35-38-1-17 is to be applied in the case of a person who is sentenced to two consecutive terms in prison and has served the first term in prison before seeking relief from a court under IC 35-38-1-17. The Court interpreted IC 35-38-1-17(a) as meaning that a convicted person, to obtain relief from a court under IC 35-38-1-17 without the prosecuting attorney's consent, must seek the relief within 365 days after the convicted person begins serving the *entire* sentence imposed; therefore, a convicted person seeking relief within 365 days after beginning to serve the second of two consecutive terms could not be granted relief under IC 35-38-1-17 without the prosecuting attorney's consent.

In deciding this issue, the Court of Appeals found substantive effect in the change made in IC 35-38-1-17(a)(1) by the 2005 TC bill. Because the change made in the 2005 TC bill was intended to have no substantive effect, PD 3670 has been prepared to undo that change, amending IC 35-38-1-17(a)(1) as follows:

SECTION 1. IC 35-38-1-17, AS AMENDED BY P.L.2-2005, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) Within three hundred sixty-five (365) days after:

(1) a convicted person begins serving the **person's** sentence; ~~imposed on the person;~~

Judge Baker, while expressing appreciation for the conservative approach traditionally taken in preparing the TC bill, pointed out that the decision of the Court of Appeals in *Redmond v. State* settled a question about the interpretation of IC 35-38-1-17(a), and that the proposed 2010 TC bill amendment to IC 35-38-1-17(a) would put the interpretation of IC 35-38-1-17(a) again into question. Representative Foley agreed with Judge Baker's observation but said he believes that any legislative action to resolve questions about the interpretation of IC 35-38-1-17(a) should be taken in a bill other than the TC bill.

The Commission, by consent, decided that the 2010 TC bill:

- [1] will include the contents of PD 3103;
- [2] will include the contents of PD 3501, with the changes proposed by Gretchen Gutman and accepted by the Commission;
- [3] will not include the repealer of IC 6-1.1-29-1 that is in PD 3103; and
- [4] will include the SECTION in PD 3670 amending IC 35-38-1-17(a).

The Commission also authorized the insertion in the digest of the TC bill this statement: "(The introduced version of this bill was prepared by the Code Revision Commission.)".

IV. DISCUSSION OF NONCODE STATUTES

Mr. John Stieff, Director of the Office of Code Revision, Legislative Services Agency, noted that early in November, the Legislative Services Agency (LSA) sent out 136 letters to the interested parties on the Code Revision Commission's mailing list. LSA included with the letter a

copy of an outline that described particular types of Noncode SECTIONS of law and LSA's proposed way of dealing with those statutes.

Mr. Stieff received one response to this letter. He concluded that the lack of response may be due to one of three factors:

- (1) One possibility is that people simply don't care about this issue, which Mr. Stieff hoped is not the case.
- (2) The second possibility is that people think LSA is doing a good job on this issue, and they trust LSA to make good decisions going forward.
- (3) The third possibility is that when the Commission's interested parties get something like LSA's letter and are asked to respond, the parties' eyes glaze over in attempting to come up with specific ways of dealing with generalized propositions.

However, Mr. Stieff believed the last of these possibilities explains the lack of response to the letter. For this reason, Mr. Stieff asked the Code Revision Commission to defer a final decision on how LSA deals with the different types of Noncode acts until the next legislative interim. Mr. Stieff stated that more time would be beneficial to give the attorneys in the Office of Code Revision and the Office of Bill Drafting and Research an opportunity to consult with the various stakeholders and run specific statutes past them to get their feedback on the best way to deal with specific Noncode acts.

Specifically, Mr. Stieff desires feedback from the fiscal analysts in the four caucuses of the General Assembly and the Budget Agency on several issues concerning taxation, finance, and the biennial budget. In addition, Mr. Stieff would like get feedback from the insurance industry and the Prosecuting Attorneys Council and the Public Defenders Council on matters concerning criminal law. He would also like input from bond council concerning several types of provisions affecting the creation and issuance of bonds.

The attorneys in the Office of Code Revision with cooperation from the Office of Bill Drafting and Research will contact these stakeholders and others in trying to determine how best to deal with the Noncode statutes that are currently in effect and how to deal with them going forward.

Mr. Stieff stated that LSA will take into account the comments given by Marcia Oddi, who was the only person to respond to the letter. Mr. Stieff thanked Ms. Oddi for her time, effort, and concern and noted that a copy of her response memo is included in the Commission's packet. Mr. Stieff noted that LSA and Ms. Oddi agree on some points and disagree on some points. He explained that the main area of disagreement revolves around the treatment of applicability provisions, and that Ms. Oddi suggests that all applicability provisions be placed in the Indiana Code, while LSA believes that it is not always practical to do that. Mr. Stieff stated that LSA approaches each situation on a case-by-case basis and tries to determine the best way to deal with the issue. Mr. Stieff proposed for this legislative session that if a provision can be placed in the Indiana Code, it will be placed in the Code unless there is a good reason to keep the provision out of the Code. He stated that some considerations that may affect this decision are: 1) it is not practical to place the provision in the Code; 2) the provision is temporary in nature; 3) the provision is a legalizing provision; 4) the provision voids an administrative rule; 5) the provision applies to only one or a very limited number of individuals or entities; or 6) the provision is a bonding, insurance, taxation, or finance applicability provision.

Mr. Stieff noted that he will instruct the attorneys in the Office of Bill Drafting and Research about these guidelines, which are designed to place more provisions in the Indiana Code and out of the Noncode law than under current practice.

Mr. Bob Rudolph, Senior Attorney, Office of Bill Drafting and Research, Legislative

Services Agency provided further information regarding the noncode project. Mr. Rudolph reminded the Commission that LSA began by analyzing 9200 sections of noncode and that roughly 2000 remain to be considered. He stated that after the noncode bill passed in the last legislative session, about 70 percent of the noncode provisions were dealt with, and about half of the remaining provisions deal with tax and finance. Mr. Rudolph hopes that the noncode project will be completed next year. He explained the content of PD 3542, which includes a small number of noncode provisions that LSA believes are appropriate to codify and can be done in the short legislative session. Mr. Rudolph pointed out one provision that he found interesting related to the Indiana Medical History Museum, and explained that this provision is appropriate to move into the Indiana Code because it involves a 99 year lease. Mr. Rudolph inquired whether the Commission would like for PD 3542 to be brought in the current legislative session or reserved for the next legislative session with the remaining noncode project material.

Representative Foley suggested that PD 3542 would be appropriate for the current legislative session if it can clear the record of a few of the noncode issues. Then, he asked Mr. Rudolph to further explain why sections of law are being both added and repealed in the bill. Mr. Rudolph stated that provisions were being repealed from the noncode, but added to the Code, so that the laws are still in effect and simply moved from the noncode law into the Code. Chairman Bartlett noted that the Commission had previously discussed taking its time to ensure the accuracy of the noncode project. He asked if the bill needed to be held for the other noncode material, or if it is permissible to proceed with this small bill in the current legislative session. Representative Foley noted that he didn't see a problem with proceeding with the bill to move the noncode project forward and then completing the final work on the project in the next legislative session.

The Commission decided by consent to bring PD 3542 in the current legislative session. The Commission also authorized the insertion in the digest of the bill this statement: "(The introduced version of this bill was prepared by the Code Revision Commission.)".

V. ADJOURNMENT

No members of the public in attendance made comments regarding the issues presented to the Commission. Chairman Bartlett thanked the members of the Commission and the staff. The meeting was adjourned by Chairman Bartlett at 2:40 p.m.